

AMENDMENT UNDER 37 C.F.R. § 1.111

Application No. 09/933,957

Attorney Docket Q92694

REMARKS

General remarks

Claims 21-25 are all the claims pending in the application.

Applicant has canceled claims 1-20, without prejudice or disclaimer, and thoroughly rewritten into claims 21-25. New claims 21-25 contain no impermissible new matter, and are fully supported in the originally-filed specification. New claims 21-25 focus more selectively on various specific embodiments of the invention, and are respectfully submitted to clearly distinguish over all known prior art.

Although the cancellation of the original claims theoretically renders the rejection over Forward moot, Applicant now points out the manner in which the claims patentably distinguish over this reference.

Distinctions over Forward

First of all, Forward is drawn to a real estate sales method for new home developments. Forward does not receive rental property search criteria. Forward does not retrieve apartment descriptions related to apartments matching the rental property search criteria. Forward does not receive confirmation from the user that the user rented an apartment. Independent claim 21 requires all of these features, and Forward provides none of them. Therefore, it would be unreasonable for the Examiner to assert that Forward anticipates the subject matter of claim 21 or any of its dependent claims 22-25.

Furthermore, Forward cannot be said to teach or suggest the subject matter of any of claims 21-25, or render unpatentable the above-identified requirements of independent claim 21, for the reasons which immediately follow.

Exclusive focus of Forward. Forward focuses exclusively on sales, while claim 21 specifically targets rental real estate. The rental and sales markets are completely different, having in common only the fact that real estate is involved. The fees charged by real estate brokers in sales transactions are higher than corresponding rental transactions. For example,

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7.5% of one year's rental amount of \$2,000 per month is just \$1,800 while 3% of the sale of a \$250,000 house is \$7,500. Property is rented more frequently than it is sold, since a typical rental lease is just 1-2 years.

Effect of these market differences. As a result, rental owners save less money per transaction than sales owners by reducing their fees. The cost of advertising rentals needs to be proportionately less expensive than advertising the sale of a property. Also, the method of discounting real estate for rentals needs to be different than for sales to encourage participation. Thus, the particular embodiment having the fixed rebate value is the focus of independent claim 21.

Furthermore, the focus of Forward is different from that of the method defined by claim 21. Forward targets new real estate project sellers. The Forward patent aim is to eliminate fees paid to brokers that increase the net cost to builder and reduce builder's project financing costs. Specifically, the Forward patent describes this additional cost that builders must add to the cost of completing a full cycle of construction and sales (paying a broker to find buyers), in addition to costs of constructing a house and therefore be financed at the planning stage when constructing the house.

The size of the reward/rebate or fee affects the amount of information the Forward patent permits and describes that can be disclosed. This is a flaw that makes the Forward patent's approach unsuitable for the rental market, but does not affect the method as now expressly claimed.

Transactional differences. Typical sales transaction involve more money and result in higher fees than typical rental transactions, so buyers have a big incentive to capture part of that fee for themselves. Since direct contact between a buyer and a seller in a sales transaction, as described in Forward, gives a buyer a chance to deal directly with the seller, avoiding reporting the sale to the website host and therefore avoiding paying the fee that seller would otherwise pay the website host.

The method defined by claim 21 allows for direct contact between seller and buyer, but there is a much smaller financial incentive to avoid reporting a successfully completed rental

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transactions since rental transactions typically involve less money and occur more frequently than sales transactions.

Other points of difference. The Forward patent repeatedly notes that it targets sales of new homes, and its approach is not effective for rentals. The Forward patent repeatedly mentions sales and clearly targets sales. See “background of the invention.” In the summary of the invention, the object of the invention is repeatedly described as targeting commissions on transactions that involve full ownership. Forward does not once use the word “rent” and cannot be said to contain any suggestion that relates to the rental market.

Conclusion - Forward vs. claims 21-25. Applicant has focused the claims on the particular embodiment in which apartments are rented, and in which the incentive to cut out the host is minimal to both the user and the lessor. The teachings of Forward are not really relevant to this particular embodiment, and Forward lacks almost every express requirement of independent claim 21. For all the reasons presented above, Forward is respectfully submitted not to anticipate the claims under 35 U.S.C. § 102, and not to render them unpatentable under 35 U.S.C. § 103. Although the Examiner may find it tempting to think that everything in the real estate sphere is all old and obvious, the Examiner is respectfully requested to carefully consider the claims as now presented, and to take notice of the very significant differences between real estate sales transactions and markets, and real estate rental transactions and markets.

Applicant thus respectfully urges the Examiner to find that claims 21-25 patentably distinguish over Forward.

Conclusion and request for telephone interview

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

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The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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